

05 - 468 OCT - 6 2005

No. OFFICE OF THE CLERK

**In the
Supreme Court of the United States**

JOHN PARKER ROE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Sixth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Defendant was denied the effective assistance of counsel and due process of law by the actions of trial counsel without the Defendants approval, the refuse to permit him to be evaluated and thereby eliminating his only defense. There is a reasonable probability that the result as to first degree murder would have been different had counsel not been ineffective.

Was the Defendant denied counsel and a fair jury by the action of counsel, over the objection of the Defendant, permitting his jailer to serve on his jury.

RULE 14.1(b) STATEMENT

The Petitioner/Appellant: John Parker Roe.

Respondent/Appellee: United States of America

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Rules

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| 28 U.S.C. § 2254 | 1 |

PETITION FOR A WRIT OF CERTIORARI

Petitioner John Parker Roe respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion for the Court of Appeals (is attached as Appendix A).

JURISDICTION

The judgment of the Court of Appeals was entered on July 11, 2005. This Court's jurisdiction is invoked under 28 U.S.C. § 2241 & 28 U.S.C. § 2254.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

28 U.S.C. § 2254 governs Petitions to vacate State Judgments heard in the Federal Courts.

STATEMENT

The District Court and Court of Appeals bellowed denied a Motion for Certificate of Appealability.

REASON FOR GRANTING PETITION

In recent years this Court has zealously enforced one of our most important constitutional rights – the Right to a Trial by Jury. In the line of cases beginning with *Apprendi v. New Jersey*, 530 US 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (1999) and ending with *Blakely v. Washington*, 124 S. Ct.

1493, 158 L. Ed. 75 and *US v. Booker*, ___ US ___, 125 S. Ct. 738, ___ L. Ed. 2d ___ (2005) this Court recognized that a fair jury should be required to decide any issues of fact. In this case, the Defendant was put to trial over his personal objection with a jury which included one of his jailers. Such allowance by the Court and Defense Counsel certainly denied the Defendant due process of law and the effective assistance of counsel. And very importantly, it denied him the right to have a fair jury try his case.

In addition, the Petitioner would ask this Court to grant Certiorari because Counsel was so deficient in this case as to essentially be no counsel under *Cronic v. United States*, 466 US 648, 104 S. Ct. 239, 80 L. Ed. 2d 657 (1984). To deprive the Defendant, over his objection, of the only defense available to him is to effectively eliminate counsel. Trial Counsel, over the objection of the Defendant, instructed him not to participate in a State Ordered mental evaluation, thereby preventing him from raising his claim of diminished capacity.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX A

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 04-6445

[Filed July 11, 2005]

| | |
|-------------------------|---|
| <u>JOHN PARKER ROE,</u> |) |
| Petitioner-Appellant, |) |
| |) |
| v. |) |
| |) |
| JACK MORGAN, Warden, |) |
| Respondent-Appellee. |) |
| <u></u> |) |

ORDER

John Parker Roe, a Tennessee state prisoner, moves through counsel for a certificate of appealability, and appeals a district court judgment denying his petition for a writ of habeas corpus, filed under 28 U.S.C. § 2254.

Upon consideration, the motion for a certificate of appealability is denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Clerk

APPENDIX B

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

No. 03-2121

[Filed November 9, 2004]

| | |
|----------------------|---|
| JOHN PARKER ROE, |) |
| Petitioner, |) |
| |) |
| v. |) |
| |) |
| JACK MORGAN, Warden, |) |
| Respondent. |) |

**ORDER OF DISMISSAL OF PETITION FOR WRIT
OF HABEAS CORPUS; ORDER DENYING
RESPONDENT'S MOTION TO STRIKE; AND
ORDER DENYING RESPONDENT'S MOTION FOR
JUDGMENT AS A MATTER OF LAW**

On February 28, 2003, John Parker Roe ("Roe") petitioned this court for a writ of habeas corpus under 28 U.S.C. § 2254. Roe is serving a life sentence at the Brushy Mountain Correctional Complex. On October 31, 2003, Jack Morgan ("Morgan"), warden of the Brushy Mountain Correctional Complex, filed a "Motion for Judgement as a Matter of Law." Also pending is Morgan's "Motion to

Strike" filed January 12, 2004. For the following reasons, Roe's petition is DISMISSED and all other pending motions are DENIED as moot.

I. Background

Roe was convicted of first-degree murder in the Criminal Court of Shelby County, Tennessee, on August 30, 1996. (Pet. at 1.) He appealed to the Tennessee Court of Criminal Appeals, which affirmed his conviction on January 12, 1998. (*Id.* at 3.) Roe sought leave to appeal to the Tennessee Supreme Court, which denied his application for permission to appeal on January 4, 1999. (*Id.*) He filed a petition for certiorari to the Supreme Court of the United States, which was denied on June 7, 1999. (*Id.* at 4.) Roe then sought post-conviction relief in the Criminal Court of Shelby County. (*Id.*) That court conducted an evidentiary hearing and denied Roe's claim on October 31, 2000. (*Id.* at 5.) Roe appealed. The Tennessee Court of Criminal Appeals affirmed the trial court's denial of post-conviction relief, and the Tennessee Supreme Court denied Roe's application for permission to appeal on February 24, 2003. *See Roe v. State*, 2002 WL 31624850 (Tenn. Crim. App. Nov. 20, 2002), *app. denied*, Feb. 24, 2003.

Roe filed the present 28 U.S.C. § 2254 petition for writ of habeas corpus on February of 28, 2003, seeking to vacate his conviction. On October 1, 2003, Roe filed with this court a "Notice of Supplemental New Scientific Evidence in Support of Motion to Vacate Judgment," in which he presented evidence that he had not presented to the state courts. On December 31, 2003, Roe filed a "Second Submission of Supplemental Factual Authority in Support of Petition to Vacate Tennessee Judgment Due to New Evidence," and, on January 2, 2004, he submitted a "Notice

of Filing/Submission of New Evidence" in support of his petition.

On October 31, 2003, respondent Morgan filed a "Motion for Judgment as a Matter of Law". On January 12, 2004, Morgan filed a "Motion to Strike [Roe's] Supplemental Filings and to Dismiss [Roe's] Petition Without Prejudice Pending Exhaustion." In that motion, Morgan stated that Roe had filed a motion to reopen his post-conviction petition in the Criminal Court of Shelby County on October 8, 2003, and had provided to the state court the same evidence he had provided to this court in his October 1, 2003, "Notice of Supplemental New Scientific Evidence in Support of Motion to Vacate Judgment." (Mot. to Strike at 1 and Attachment 1.) The trial court denied his motion to reopen, and Roe filed a notice of appeal on December 8, 2003. (*Id.* Attachments 2 and 3.) Morgan therefore moved the court to dismiss Roe's petition without prejudice because Roe was pursuing a state court motion to reopen his post-conviction petition involving one of the issues he sought to raise in his federal petition. (Mot. to Strike at 2.) On March 26, 2004, this court issued an "Order Staying Case" pending resolution of the state trial court's denial of his motion to reopen. On September 22, 2004, Roe submitted a "Notice of Exhaustion of State Remedies" and this court responded six days later by issuing an "Order Reopening Case."

Before the court now are 1) Roe's petition for writ of habeas corpus, in which Roe contends that his conviction is unlawful and should be vacated due to constitutional violations at his trial; and 2) Morgan's motion for judgment as a matter of law.